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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MARIA ESTRADA,

Plaintiff,

v.

DENNY'S INC.; and DOES 1 through  
50, inclusive,

Defendant.

Case No.

**NOTICE OF REMOVAL OF CIVIL  
ACTION TO FEDERAL COURT  
ON THE BASIS OF DIVERSITY  
JURISDICTION**

**[28 U.S.C. §§ 1332, 1441, 1446]**

Complaint Filed: March 4, 2022  
(Los Angeles County Superior Court  
Case No. 22STCV07979)

TO THE CLERK OF THE ABOVE-ENTITLED COURT AND  
PLAINTIFF MARIA ESTRADA AND HER ATTORNEYS OF RECORD:

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PLEASE TAKE NOTICE that Defendant DENNY’S INC. (“Defendant”) hereby removes the above-captioned action from Los Angeles County Superior Court in the State of California to the United States District Court for the Central District of California pursuant to 28 U.S.C. §§ 1332, 1441(a) and (b), and 1446.

**I. STATEMENT OF JURISDICTION**

1. This Court has original jurisdiction over this action under the diversity of citizenship statute. 28 U.S.C. § 1332(a). In relevant part, the diversity statute grants district courts original jurisdiction over civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states. As set forth below, this case meets all of the diversity statute’s requirements for removal and is timely and properly removed by the filing of this Notice.

**II. PLEADINGS, PROCESS, AND ORDERS**

2. On March 4, 2022, Plaintiff Maria Estrada (“Plaintiff”) filed a Complaint (“Complaint”) against Defendant in Los Angeles County Superior Court: *Maria Estrada v. Denny’s Inc.*, Case No. 22STCV07979 (the “State Court Action”). The Complaint asserts the following causes of action: (1) disability discrimination in violation of the Fair Employment and Housing Act (“FEHA”); (2) failure to accommodate a disability in violation of FEHA; (3) retaliation in violation of FEHA; (4) failure to prevent harassment and discrimination in violation of FEHA; (5) wrongful termination in violation of public policy; and (6) retaliation in violation of public policy, Labor Code §1102.5

3. On March 14, 2022, Plaintiff served Defendant with the Summons and Complaint through Defendants’ agent for service of process. (Declaration of Nelly Chavez (“Chavez Decl.”) ¶ 2 & Exh. “A.”)

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1           4. On April 11, 2022, Defendant filed an Answer in the form of a  
2 general denial and affirmative defenses to the Complaint in Los Angeles County  
3 Superior Court. (Chavez Decl. ¶ 3& Exh. “B.”)

4           5. Pursuant to 28 U.S.C. § 1446(d), Exhibits A-B constitute all process,  
5 pleadings, and orders filed in the State Court Action. (Chavez Decl. ¶ 4.) To  
6 Defendant’s knowledge, no other process, pleadings, or orders related to this case have  
7 been filed or served by any party in the State Court Action. (*Id.*)

8           6. To Defendant’s knowledge, no proceedings related hereto have been  
9 heard in the State Court Action and no other parties have been named or served with  
10 the Summons and Complaint in the State Court Action. (*Id.* at ¶¶ 5-6.)

### 11 **III. TIMELINESS OF REMOVAL**

12           7. This Notice of Removal is timely filed as it is filed within thirty (30)  
13 days of March 14, 2022, the date of service of the Summons and Complaint, and within  
14 one year from the commencement of the State Court Action. See 28 U.S.C. § 1446(b),  
15 (c).

### 16 **IV. REMOVAL JURISDICTION**

17           8. This Court has original jurisdiction of the State Court Action based  
18 on diversity of citizenship pursuant to 28 U.S.C. § 1332(a). Pursuant to 28 U.S.C.  
19 § 1441(a) and (b), the State Court Action may be removed to this Court by Defendant  
20 because it is a civil action between citizens of different states and the amount in  
21 controversy exceeds \$75,000, exclusive of interests and costs, as set forth below.

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**A. Diversity of Citizenship**

**1. Plaintiff is a Citizen of California**

1. For diversity purposes, a person is a “citizen” of the state in which he or she is domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). A person’s domicile is the place he or she resides with the intention to remain, or to which he or she intends to return. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).

2. At the time Plaintiff commenced the State Court Action, and at the time of removal, Plaintiff was a citizen of the State of California. (Complaint, ¶ 1); *State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 519 (10th Cir. 1994) (allegation by party in state court complaint of residency “created a presumption of continuing residence in [state] and put the burden of coming forward with contrary evidence on the party seeking to prove otherwise”); *Smith v. Simmons*, No. 1:05-CV-01187-OWW-GSA, 2008 WL 744709, at \*7 (E.D. Cal. Mar. 18, 2008) (place of residence provides “prima facie” case of domicile).

**2. Defendant Denny’s Inc. is a citizen of Florida**

3. Denny’s, Inc. is a corporation. At the time of the filing of the Complaint, Denny’s Inc., was and is still organized under the laws of the State of Florida, with its principal place of business in the State of South Carolina. (Declaration of Jasmine Taylor (“Taylor Decl.”), ¶ 3.)

4. It is well settled that a corporation “shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business.” 28 U.S.C. § 1332(c)(1). With regard to the corporate citizenship analysis, the United States Supreme Court has made clear that a single, uniform test – the “nerve center” test – shall be applied in determining a corporation’s “principal place of business.” See *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010). Although courts previously employed a number of tests to determine a corporation’s “principal place of

1 business,” the United States Supreme Court clarified this uncertainty and announced a  
2 single, uniform test to be applied in making such a determination. *Id.* In this regard,  
3 the Court held that the “nerve center” test should be used to determine a corporation’s  
4 “principal place of business.” *Id.* To this end, the Court reasoned that a corporation’s  
5 “nerve center” is normally located where the corporation maintains its corporate  
6 headquarters and where the “corporation’s officers direct, control, and coordinate the  
7 corporation’s activities.” *Id.* In other words, a corporation’s “principal place of  
8 business” can be found where the corporation’s “brain” is located. *Id.* at 95.

9           5. Applying the above analysis, the principal place of business, or  
10 “nerve center” of Denny’s Inc., is located in South Carolina. Denny’s Inc. has at all  
11 times had its principal place of business and headquarters in South Carolina. (Taylor  
12 Decl., ¶¶ 3-4.) Denny’s high-level officers direct, control, and coordinate the  
13 Company’s corporate and business activities from South Carolina. (*Ibid.*) Accordingly,  
14 Denny’s Inc. is not a citizen of California, but rather is a citizen of the State of South  
15 Carolina for purposes of determining diversity of citizenship.

16           **3. The Citizenship of the Doe Defendants Should Be Disregarded**  
17           **for Diversity Purposes**

18           6. For purposes of removal, the citizenship of defendants sued under  
19 fictitious names should be disregarded, and citizenship of only named defendants  
20 should be considered. 28 U.S.C. § 1441(b)(1).

21           7. Defendants Does 1 through 50 are fictitious. The Complaint does  
22 not state the identity or status of these fictitious defendants, nor does it state any specific  
23 allegation of wrongdoing against any fictitious defendants. Pursuant to § 1441(b)(1),  
24 the citizenship of these fictitious defendants cannot destroy the diversity of citizenship  
25 between the parties and should be disregarded. *Newcombe v. Adolf Coors Co.*, 157 F.3d  
26 686, 690 (9th Cir. 1998).

27           8. As demonstrated above, Plaintiff and Defendant are diverse because  
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1 they are citizens of different states. *See* 28 U.S.C. § 1332(a); *Lincoln Prop. Co. v. Roche*,  
2 546 U.S. 81, 84 (2005).

3 **B. The Amount in Controversy Is Over \$75,000**

4 9. Defendant denies the validity and merit of all of Plaintiff's claims,  
5 the legal theories upon which they are purportedly based, and the claims for monetary  
6 and other relief that flow from them. However, assuming *arguendo* for purposes of this  
7 removal only that Plaintiff is able to establish liability based on her claims, the amount  
8 in controversy exceeds the jurisdictional minimum. "In measuring the amount in  
9 controversy, a court must assume that the allegations of the complaint are true and that  
10 a jury will return a verdict for the plaintiff on all claims made in the complaint." *Kenneth*  
11 *Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal.  
12 2002); *see also Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D.  
13 Cal. 2008).

14 10. The removal statute requires that a defendant seeking to remove a  
15 case to federal court must file a notice "containing a short and plain statement of the  
16 grounds for removal." 28 U.S.C. § 1446(a). The Supreme Court, in *Dart Cherokee*  
17 *Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 549 (2014), recognized that "as  
18 specified in §1446(a), a defendant's notice of removal need include only a plausible  
19 allegation that the amount in controversy exceeds the jurisdictional threshold."  
20 Supporting evidence is only required if the plaintiff contests or the court questions the  
21 allegations supporting removal. *Id.* at 554. Otherwise "the defendant's amount-in-  
22 controversy allegation should be accepted" just as a plaintiff's amount-in-controversy  
23 allegation is accepted when a plaintiff invokes federal court jurisdiction. *Id.* at 553. As  
24 one district court previously held:

25 Under this standard, "the removing party's burden is 'not daunting,'  
26 and defendants are not obligated to 'research, state, and prove the  
27 Plaintiff's claims for damages.'" When a "[d]efendant's calculations  
28 [are] relatively conservative, made in good faith, and based on  
evidence wherever possible," the court may find that the

1 “[d]efendant has established by a preponderance of the evidence that  
2 the amount in controversy” is met.

3 *Cagle v. C&S Wholesale Grocers, Inc.*, 2014 U.S. Dist. LEXIS 21571 (E.D. Cal. Feb.  
4 18, 2014); *see also Roa v. TS Staffing Servs., Inc.*, No. 2:14-CV-08424-ODW, 2015 WL  
5 300413, at \*2 (C.D. Cal. Jan. 22, 2015) (holding that since the defendant “was not  
6 required to submit evidence in support of its allegations, as *Dart Cherokee* teaches,” the  
7 plaintiff’s attack on the evidence was “fallacious”).

8  
9 11. The Complaint does not indicate a total amount of damages claimed;  
10 consequently, Defendant only needs to show by a preponderance of the evidence (that  
11 it is more probable than not) that Plaintiff’s claimed damages exceed the jurisdictional  
12 minimum. *Sanchez v. Monumental Life Insurance Company*, 95 F.3d 856, 862 (9th Cir.  
13 1996), *amended* 102 F.3d 398, 404 (9th Cir. 1996); *White v. J.C. Penny Life Ins. Co.*,  
14 861 F. Supp. 25, 26 (S.D. W. Va. 1994) (defendant may remove suit to federal court  
15 notwithstanding the failure of plaintiff to plead a specific dollar amount in controversy;  
16 if the rules were otherwise, “any Plaintiff could avoid removal simply by declining . . .  
17 to place a specific dollar claim upon its claim”). The defendant must provide evidence  
18 showing that it is “more likely than not” that the amount in controversy exceeds that  
19 amount. *Id.*

20 12. While Defendant denies fully any and all liability and damages, it  
21 can be reasonably ascertained from the pleadings and the prayer for relief that the  
22 amount in controversy does, in fact, exceed \$75,000.

23 **1. Lost Wages**

24 13. Plaintiff seeks recovery of lost earnings from the time of her  
25 termination, on March 5, 2020. (*See* Complaint, ¶ 34.)

26 14. Plaintiff’s allegations put in controversy the amount she would have  
27 earned up to and through the date of trial, including any benefits and pay increases. *See*  
28 Judicial Council of California, Civil Jury Instructions (“CACI”) No. 2433 (2012); *Wise*



1 v. *S. Pac. Co.* (1970) 1 Cal.3d 600, 607. Assuming trial is one year after the complaint  
2 was filed, or March 2023, the amount in controversy is 36 months of wages and benefits  
3 from the date of Ms. Estrada's last day of work with Defendant, or approximately 156  
4 weeks.

## 5 2. Emotional Distress and Punitive Damages

6 15. Plaintiff also alleges emotional distress and punitive damages. *See*  
7 Complaint, ¶¶ 31, 33, 39, 41, 42, 52, 53, 63, 69, 71, 83, 85; Prayer for Relief ¶ 5. These  
8 categories of damages must be considered when calculating the amount in controversy.  
9 *See Coleman v. Assurant, Inc.*, 463 F. Supp. 2d 1164, 1168 (D. Nev. 2006) ("It is well  
10 established that punitive damages are part of the amount in controversy in a civil  
11 action.") (citing *Gibson v. Chrysler Corp.*, 261 F. 3d 927, 945 (9th Cir. 2001));  
12 *Richmond v. All State Insurance*, 897 F. Supp. 447, 449-50 (S.D. Cal. 1995) (general  
13 and special damages included in the amount in controversy).

14 16. Numerous court decisions and jury verdicts in state and federal  
15 courts located within the Ninth Circuit demonstrate that non-economic damages in  
16 excess of \$75,000 have been awarded to individual plaintiffs where, as here, the plaintiff  
17 has alleged disability discrimination and wrongful termination claims. *See Velez v.*  
18 *Roche*, 335 F. Supp. 2d 1022, 1038-40 (N.D. Cal. 2004) (surveying discrimination and  
19 harassment cases awarding emotional distress damages and concluding that "substantial  
20 jury awards of hundreds of thousands of dollars for non-economic damages have been  
21 upheld where there is evidence . . . that the plaintiff suffered heightened mental  
22 anguish"). Therefore, although Defendants deny that Plaintiff suffered emotional  
23 distress, if Plaintiff were to prevail and establish such injuries, her damages for  
24 emotional distress alone could well exceed the jurisdictional minimum.

25 17. Moreover, punitive damages are included in calculating the amount  
26 in controversy. *Davenport v. Mut. Benefit Health & Accident Ass'n*, 325 F.2d 785, 787  
27 (9th Cir. 1963); *Aucina v. Amoco Oil Co.*, 871 F. Supp. 332, 334 (S.D. Iowa 1994).

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1 California law does not provide any specific monetary limit on the amount of punitive  
2 damages that may be awarded under Civil Code section 3294. *Boyle v. Lorimar*  
3 *Productions, Inc.*, 13 F.3d 1357, 1360 (9th Cir. 1994). Additionally, employment  
4 discrimination cases have the potential for large punitive damages awards. *Simmons*,  
5 *supra*, 209 F. Supp. 2d at 1033. A punitive damages award may equal as much as four  
6 times the amount of the actual damages award. *State Farm Mutual Auto Ins. Co. v.*  
7 *Campbell*, 538 U.S. 408, 425 (2003). In *Aucina v. Amoco Oil, Co.*, 871 F. Supp. 332  
8 (S.D. Iowa 1994), the defendant employer established that the amount in controversy  
9 exceeded the jurisdictional minimum in a discrimination and wrongful discharge  
10 lawsuit where the former employee asserted claims for lost wages, lost benefits, mental  
11 anguish, and punitive damages. The court noted that “[b]ecause the purpose of punitive  
12 damages is to capture a defendant’s attention and deter others from similar conduct,”  
13 the plaintiff’s claim for punitive damages “might alone” exceed the jurisdictional  
14 minimum. *Id.* at 334. Although Defendants vigorously deny Plaintiff’s allegations,  
15 including her alleged damages, if Plaintiff were to prevail on her punitive damages  
16 claim, that claim alone could exceed the jurisdictional minimum.

## 17 10. Attorneys’ Fees

18 18. Plaintiff’s Complaint also seeks the recovery of her attorney’s fees.  
19 (Complaint, ¶¶ 34, 42, 53, 71, ; *see also* Prayer for Relief ¶ 4.) Attorney’s fees that are  
20 potentially recoverable by statute also are included in determining the amount in  
21 controversy. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998).

22 19. Plaintiff’s Complaint alleges violation of the Fair Employment and  
23 Housing Act, which authorizes an award of reasonable attorney’s fees to a prevailing  
24 plaintiff. Cal. Gov. Code §12965(b). While Plaintiff’s attorney’s fees cannot be  
25 precisely calculated, it is reasonable to assume that they could exceed a damages award.  
26 *Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029, 1035 (N.D. Cal. 2002) (noting that  
27 “attorneys’ fees in individual discrimination cases often exceed the damages”). *See*,  
28

1 *e.g., Beaty v. BET Holdings, Inc.*, 222 F.3d 607 (9th Cir. 2000) (recognizing that an  
2 award of attorneys' fees of \$376,520 may be appropriate in a discrimination case where  
3 the jury awarded compensatory damages of only \$30,000). *See also Simmons v. PCR*  
4 *Technology*, 209 F. Supp. 2d 1029, 1035 (N.D. Cal. 2002) (noting that in the court's  
5 twenty-plus years' experience, attorneys' fees in individual discrimination cases often  
6 exceed the damages).

7 20. Any estimate of attorney's fees includes fees over the life of the  
8 case, not just the fees incurred at the time of removal. *Id.* Taking into account the claim  
9 for reasonable attorneys' fees that stems from Plaintiff's claims, the amount in  
10 controversy easily exceeds \$75,000 and, by including her claim for attorneys' fees, it is  
11 clear beyond a preponderance of the evidence that Plaintiff seeks to recover an amount  
12 in excess of \$75,000 in this action.

13 21. Based upon the pleadings, it is clear that Defendant has carried its  
14 burden of demonstrating by a preponderance of the evidence that the amount in  
15 controversy in this matter exceeds the jurisdictional minimum of \$75,000.00. *See also*  
16 *Chavez Decl.*, ¶¶ 8-10. Removal of this action is therefore proper. *See Guglielmino v.*  
17 *McKee Foods Corp.*, 506 F.3d 696, 701 (9th Cir. 2007) (finding that when "complaint  
18 is unclear and does not specify 'a total amount in controversy,'" the proper burden of  
19 proof for removal is a preponderance of the evidence). *See also De Aguilar v. Boeing*  
20 *Co.*, 47 F.3d 1404, 1412 (5th Cir. 1995) (removal proper where "the defendant can show  
21 by a preponderance of the evidence that the amount in controversy is greater than the  
22 jurisdictional amount"); *accord Gaus v. Miles, Inc.*, 980 F.2d 564, 566-67 (9th Cir.  
23 1992); *Luckett v. Delta Airlines, Inc.*, 171 F.3d 295, 298 (5th Cir. 1999) (facts presented  
24 in notice of removal, combined with plaintiff's allegations, sufficient to support finding  
25 that jurisdictional limits satisfied); *Ditcharo v. UPS*, No. 09-30993, 2010 U.S. App.  
26 LEXIS 9012, \*\*5-7 (5th Cir. April 29, 2010) (adopting *Luckett* "preponderance of the  
27 evidence" standard).

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1 **VII. VENUE**

2 22. Venue lies in the Central District of California pursuant to 28 U.S.C.  
3 sections 84(b), 1441(a), and 1446(a). Plaintiff originally brought the State Court Action  
4 in the Superior Court of the State of California, County of Los Angeles.

5 **VIII. NOTICE OF REMOVAL**

6 23. Contemporaneously with the filing of this Notice of Removal in the  
7 United States District Court for the Central District of California, the undersigned is  
8 providing written notice of such filing to Plaintiff's counsel of record: Katherine J.  
9 Odenbreit, kodenbreit@mahoney-law.net, and Raleigh P. Dixon, rdixon@mahoney-  
10 law.net, Mahoney Law Group, APC, 249 East Ocean Boulevard, Suite 814, Long  
11 Beach, CA 90802 (Chavez Decl. ¶ 7.) In addition, a copy of this Notice of Removal  
12 will be filed with the Clerk of the Superior Court of the State of California, County of  
13 Los Angeles. (*Ibid.*)

14 WHEREFORE, Denny's, Inc. prays that the Court remove this civil action  
15 from the Superior Court of the State of California, County of Los Angeles, to the United  
16 States District Court for the Central District of California.

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18  
19 Dated: April 11, 2022

LITTLER MENDELSON, P.C.

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22 Matthew E. Farmer

23 Attorneys for Defendant Denny's Inc.  
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